

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

LANA SUE CALHOUN	§	
VS.	§	CIVIL ACTION NO. 9:22-CV-35
DIRECTOR, TDCJ-CID	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner Lana Sue Calhoun, proceeding through counsel, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. The magistrate judge recommends dismissing the petition as barred by the statute of limitations.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. The parties filed objections to the magistrate judge’s Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). In her one-sentence objections, Petitioner claims that the “report does not do fair and impartial justice,” but she has not demonstrated that the magistrate’s recommendation to dismiss the petition as barred by the statute of limitations is incorrect. After careful consideration of all the pleadings and the relevant case law, the Court concludes that Petitioner’s objections lack merit.

Respondent agrees with the magistrate judge's recommendation to dismiss the petition as untimely, but argues that Petitioner's guilty plea bars her from arguing that actual innocence allows the Court to consider the merits of her untimely petition. It is not necessary for the Court to address this argument because Petitioner did not show that she was actually innocent of the offense, as required by *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013).

ORDER

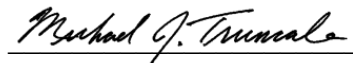
Accordingly, the objections [Dkt. 20 and Dkt. 23] are OVERRULED. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge [Dkt. 19] is ADOPTED. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

In addition, Petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires Petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, Petitioner need not establish that she should prevail on the merits. Rather, she must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, Petitioner must show that jurists of reason

would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

Here, Petitioner has not shown that any of the issues raised by her claims are subject to debate among jurists of reason, or that a procedural ruling was incorrect. In addition, the questions presented are not worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability.

SIGNED this 9th day of January, 2025.



Michael J. Truncala
United States District Judge